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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

In re NICOLE C. et al., Persons Coming
Under the Juvenile Court Law.

B157217

BENJAMIN C.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent.

(Super. Ct. No. CK 39711)
(Leslie Flynn, Referee.)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

ORIGINAL PROCEEDING; petition for extraordinary writ. Denied.

Ernesto P. Rey for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Pamela S. Landeros, Deputy County
Counsel, for Real Party in Interest.

No appearance for Minors.

Petitioner Benjamin C. is the father of three children, Nicole C., born in 1994, Raylene C., born in 1995, and Benjamin C., born in 1997. Nicole, Raylene, and Benjamin have been declared dependents of the juvenile court. Father seeks extraordinary writ review (Welf. & Inst. Code, § 366.26, subd. (I);¹ Cal. Rules of Court, rule 39.1B) of the juvenile court's order of March 14, 2002, setting a July 3, 2002, section 366.26 hearing.

Father contends that at the combined contested section 366.21/366.22 hearing on March 14, 2002, the court (I) abused its discretion in failing to grant him a one-day continuance of the contested section 366.21, subdivision (f) hearing and (II) erred in finding that reasonable services had been provided father. Father further claims (III) his request for an Evidence Code section 730 evaluation should have been granted. We reject these contentions and deny the petition.

BACKGROUND

Because father's contentions directly address rulings made at the 18-month hearing on March 14, 2002, we emphasize matters relevant to those proceedings, but summarize portions of the family's history leading up to that date.

Matters Preceding March 14, 2002.

Department records show first contact with this family in August 1998, following allegations of father's physical and emotional abuse of the children. The case was closed September 15, 1998.

The three children were removed from parents on November 3, 1999, following a report that they were victims of caretaker incapacity in that mother used her AFDC money to buy drugs and lived a transient lifestyle, leaving the children's care to their maternal grandmother.² In December 1999, the juvenile court ordered a contract for

¹ Additional statutory references are to the Welfare and Institutions Code, unless otherwise noted.

² Mother, whose reunification services were also terminated on March 14, 2002, has not filed a rule 39.1B petition.

informal supervision. The contract's primary goal was to maintain the family unit and assure the children's safety and protection. The contract, signed by mother and father, stated father was to participate in parenting education, take four random, observed drug tests, enroll Nicole in school forthwith, and arrange and follow up on the children's medical and dental needs. Mother was to participate in parenting education, undergo random, observed drug testing and have reasonable monitored visits, with Department discretion to liberalize. The Department was to provide appropriate referrals, visit the children monthly, and facilitate mother's visits.

On August 12, 2000, an anonymous caller reported father regularly physically and emotionally abused the children. Earlier that morning, Raylene had soiled her clothing in bed. Father grabbed her by the hair, dragged her to the bathroom and struck her numerous times in the head and face while verbally abusing her, using profanity. Father regularly hit the children and knocked them around, yelling and screaming profanities. The children had been removed from mother and given to father because of mother's incompetence, but were not any better off with father, who constantly abused them. The caller added that father constantly used marijuana and other drugs, left them within the children's reach, and abused alcohol constantly.

On August 16, after multiple unsuccessful attempts to find father and the children, the children's social worker interviewed the children at home, out of father's presence. They confirmed the physical abuse. Nicole had a speech problem and was slower to answer questions than Raylene.

According to the detention report, father's criminal record included inflicting corporal injury on a spouse/cohabitant, under the influence of a controlled substance, taking a vehicle without consent, possession of a controlled substance and robbery. "[N]ot all were convictions." Reasonable efforts had been made to prevent or eliminate the need for the children's removal, but had not been effective. The services included case management, parent training, teaching and demonstration homemaker, and

transportation. Father had been cooperative with the Department and with the in-home outreach counselor.

Nicole told the Dependency Investigator CSW that father kissed her on the chest, belly button, vaginal area and buttocks. Sometimes when he kissed her, she could see his tongue. She also said she had seen father naked and that he had put his penis on her vaginal area “‘lots of times.’” It hurt. Raylene said she had once walked in on father and Nicole and had told Benjamin, “‘O my god, . . . come on that’s too nasty.’” She said father had told her and Benjamin to watch television. By the use of “nasty,” Raylene meant father and Nicole had been naked. She said she saw them naked together “‘lots of times.’”

Told that the children were to be taken from him for physical abuse and neglect, father began to cry and told the CSW, “‘[Y]ou know I don’t hit my kids.’” The CSW told him she had questioned the children up to three times and they kept giving the same answers. For that reason, she had to remove them to protect them from future abuse. Father admitted he was having trouble training the children to use the bathroom. He admitted he lost patience and believed he could have handled the children differently. He denied hitting them on their heads. Father was cooperative and helped the CSW put the children in the car. Mother and maternal grandmother, but not father, attended the August 21, 2000, detention hearing.

The jurisdictional report stated the children were in a foster home. Father had been unavailable for an interview. (The CSW had attached her business card to father’s residence door, asking him to call, and had sent him a telegram, asking him to contact the CSW concerning the upcoming hearing.) Father was living with his mother and brother, John, a diagnosed schizophrenic receiving outpatient treatment, including Haldol injections. John had been incarcerated for arson in 1982. Father said his oldest brother committed suicide in 1991 and that he, father, had not been physically or sexually abused as a child. He had been forced to join a gang when he was 13. He attended twelfth grade at a continuation high school, but did not graduate.

Father had almost completed the family preservation program and was very cooperative with the Department and with the program. The children were receiving proper medical and dental appointments. He admitted caring for three children was somewhat overwhelming. However, according to the report, he never appeared to be out of control when caring for them. August 2000 physical examinations of the children disclosed no physical findings of sexual abuse. Nicole said father touched her in private parts in front and back, hit her with his open hand and belt on her head and buttocks. Neither Raylene nor Benjamin disclosed any abuse to clinic personnel.

The children were to begin counseling as soon as possible. Father had been provided with a bus pass, parenting and drug testing referrals, and family preservation services.

Father appeared at the pretrial resolution conference and counsel was appointed. He denied the petition allegations. The court made the orders set out in the attorney order, including monitored visits for father. Father was to be provided a bus pass or transportation funds.

The report for October 16, 2000, showed the children were in a foster home. They appeared to be in good health, were clean and appropriately dressed. They had gained some weight and seemed comfortable in their foster parents' presence. The children called their foster father "grandpa" and their foster mother, "melia." The CSW noted changes. While the CSW was interviewing the foster parents, Raylene tried to get the adults' attention. The CSW politely asked Raylene to take her crayons and paper and work on the floor. Raylene did so, without argument or tantrum, as was usual in father's presence. The foster parents said they had taught her to follow directions by using positive reinforcement, removal of privileges and time outs. They had "potty trained" all three children -- Nicole and Ben within two weeks and Raylene in a month and a half. (Raylene had smeared her feces on herself and around the house.) The foster parents taught her to feel comfortable with the toilet. Fights among the children now rarely involved hitting each other. Raylene was in kindergarten, Nicole in first grade. The

foster parents helped Nicole with her homework every day and she was speaking more clearly.

Father said the only child he ever “smacked” was Raylene, but also said he hit the children on the buttocks. Nicole had irregular bowel movements and he “hit her because sometimes she would leave big pieces (feces) in her underpants.” He said that if the children ever saw him naked it was when he was getting out of the shower and had left the door open so he could hear if they needed anything.

Father denied using marijuana and said he would be willing to drug test. The CSW gave him a drug testing referral. As of October 12, 2000, he had not tested, although his code had been called three times. The two girls had been referred for counseling to address possible sexual abuse and adjustment to the foster home. The foster care social worker had visited the children weekly since August 16. Father had monitored visits on September 7, 9, 11 and 25.

On October 16, 2000, the parents submitted on the social worker’s reports, and the court sustained the amended petition. The court found that on recent unknown dates, father had inappropriately physically disciplined the children and that excessive punishment had caused them unreasonable pain and suffering and put them at risk of harm. The court also found mother had been unable to provide the children with the basic necessities of life, endangering their physical and emotional health and safety. The court further found that on unknown dates, father sexually touched Nicole and had sometimes been naked in front of her and she could see his “peepee.” Father’s conduct put Nicole at risk of harm and the other children at risk of similar harm.

The supplemental report for the November 20 hearing stated the minors continued to do well, and exhibit improved behavior, with the foster parents. The CSW had had no face-to-face contact with father or mother. The report details the CSW’s numerous attempts to contact father, beginning October 27.

On November 16, father left a message for CSW, including a phone number. He wanted the foster care social worker’s phone number in order to schedule visits. The

CSW returned the call and supplied the number. Father said he had received the CSW's October 27 letter with the counseling referrals, but had not yet enrolled in counseling. The CSW asked father to come to the Department offices and said she would help him contact a counseling facility.

During attempts to reach mother, the CSW talked with the children's maternal grandmother. The grandmother expressed interest in caring for the children. The CSW scheduled a date for the maternal grandmother to go to the Department's office for a live-scan. The maternal grandmother brought the paternal grandmother with her. Father's mother said father was living with her. She admitted father "drinks alcoholic beverages excessively, and 'when he drinks he gets mean.'" She said that about a week earlier, she had been taking a bath. Father wanted to use the bathroom. When she came out, he said she had taken too long, and he purposely urinated on her bed. Another time, she was taking a bath and he screamed, "'F---ing bitch, if you don't get out of there, I'm going to get you out here naked.'" "

Father's mother also said father had threatened to throw her out the window and once pulled her by her hair, from one part of the bedroom to the other. She also revealed father had a container where he stored his marijuana. He once threatened to hit her because he could not find the box.

On November 13, 2000, maternal grandmother told the CSW that before there was an open dependency case, she once saw father sucking on Nicole's nipples. She told mother of the incident and said mother should be protecting Nicole. No immediate action was taken. Maternal grandmother was willing to testify to her statement. The report recommended father participate in random drug and alcohol testing and in a drug rehabilitation program.

A November 7, 2000, letter from the children's therapist, Dr. Hector Brito, stated the children had been seen in therapy since October 11, "for emotional trauma associated with abuse." Because there had been only four sessions, he could not report any

progress. He recommended a continuation of sessions until significant improvements occurred.

The November 30 supplemental report related that father denied the conduct reported by the maternal grandmother, saying he “would never hurt [his] children.” Father missed a scheduled appointment to discuss the case and his progress in enrolling in individual counseling. He did not call to cancel. The CSW had visited the children twice. The children “continue to make marked progress” and “respond very well” to the foster parents. Again, the CSW was unable to make contact with mother. The CSW recommended against putting the children in either grandmother’s home and recommended they remain with the foster parents, where they were thriving.

On December 6, 2000, without a hearing, father signed a case plan.³ He agreed to complete drug and alcohol testing, individual counseling to address parenting, domestic violence, parenting education, and sexual abuse. His visitation was to remain monitored, with Department discretion to liberalize. The CSW was to send copies of the case file to the children’s therapist and to “have a case conference with therapists by 1-31-01.”

The report for June 6, 2001, the six-month review date, stated father was employed by a temporary employment agency. All three children were developing at age appropriate levels. Nicole received after school help in reading and writing and would be attending summer school to ensure continuing academic progress. Raylene, too, would attend summer school for the same reason. The children remained in play therapy with Dr. Brito. Their therapy had begun in October 2000.

In May 2001, Dr. Brito reported the children had maintained good participation and consistent attendance. They had presented with symptoms of post-traumatic stress disorder consistent with a history of abuse. They were showing moderate progress in their emotional functioning but were still “suffering the consequences of the emotional

³ Mother did not attend the hearing. Her whereabouts had been unknown since April 13, 2001. Her counsel attended the hearing, as did the maternal grandmother.

trauma.” The condition was more noticeable in Nicole and Benjamin than in Raylene, who was expressing more feelings relating to abuse issues. He recommended continued treatment “until significant improvements have taken place.”

Father had not selected a therapist until March 2001.⁴

The CSW had tried to schedule a telephone conference between the children’s and father’s therapists, rather than a face-to-face meeting, because of the therapists’ incompatible work schedules. The CSW had reminded both therapists the court had ordered a conference to discuss the progress and the children’s welfare. A tentative conference was set for June 4. The CSW had left reminder messages for both therapists.

Father timely began random alcohol testing on March 24, 2001. Two tests, on April 30 and May 18, had been negative, but the CSW had not yet received copies of those results. Father missed four tests.

Following the January 8, 2001, referral for drug testing, father tested negative seven times. He had missed six test dates. He had enrolled in individual counseling to address domestic violence, drug use, parenting and sexual abuse.

A very specific individual treatment plan had been developed for him on March 12. It noted father was working to obtain sufficient housing for himself and the children, but was then living with a friend. Father had signed off on the plan, and had attended an intake and six regular sessions. He continued to deny he committed any sexual or physical abuse of the children, and could verbalize what is and is not appropriate behavior regarding child physical and sexual abuse.

His progress had been “slow.” He appeared to have “limited insight into the origin of his problems and behavior” and “to have some difficulty taking responsibility for his actions.” However, his “willingness and consistency in session attendance, as well as his willingness to complete testing outside of the therapy hour are good indicators of his commitment” He maintained a friendly, interested appearance and had been

4 Mother had not attended individual counseling.

verbal and willing to engage. Although he showed “a tendency to discuss surface issues,” he showed “some willingness to talk about more personal issues when directed. Because of his limited insight,” Menen believed his progress would likely continue to be slow.

On January 30, 2001, father had enrolled in a 12-week drug and alcohol recovery program. Father visited the children weekly. When both parents visited (mother was neither consistent nor punctual), each parent had a two-hour visit supervised by the foster parents. The children were happy and excited when they saw father. However, the foster parents reported he encouraged the children to be aggressive and to hit another child if he or she was a bother. He also encouraged them to compete with each other. He was over protective of Nicole, telling her, ““you can beat them.””

During the CSW’s last two visits, the foster parents said that father once told them he had permission to take the children to a fair. Knowing the visitation order, the foster parents told him he was not allowed to take the children. Father insisted. He drove to the fair; the foster parents followed him with the children. At the fair, father walked with the children and the foster parents followed. The CSW reminded father the court order clearly required monitored visits. If he wanted a special visit, he should notify the foster care social worker ahead of time.

The children’s language skills and behavior continued to improve. Raylene and Ben were very affectionate with the foster parents. Nicole remained “a bit more reserved,” but had become a lot more affectionate. The foster parents were very involved in the girls’ education.

Father had complied with some of the court’s December 6 orders, but had not completed individual counseling on domestic violence and sexual abuse. He had completed parenting classes and a three-month drug treatment program. He had missed six random drug tests since January 8, 2001. He had tested for alcohol twice and had missed four tests since the April 24, 2001, referral. Ms. Menen had described father’s progress as “slow,” and her report had not discussed termination of therapy. The CSW

recommended an additional six months of reunification services for father to continue individual counseling and random drug and alcohol testing. The June 4 conference between the children's and father's therapists did not occur because Ms. Menen was sick.

On June 6, the section 366.21, subdivision (e) hearing was set for contest on July 18, 2001. The Department recommended father's visits remain monitored. Father wanted unmonitored visits with Department discretion to liberalize. Father submitted on the recommendation for further family reunification services.

On July 18, children's counsel said father's therapist (who had been recommended by the department) was an intern and not qualified. Consistent with the attorney-prepared order, the court ordered the Department to arrange a qualified, licensed therapist for father, who was to remain in therapy with Ms. Menen until a successor was found.⁵ The Department had discretion to liberalize father's visits only after consultation with children's counsel. The Department was to prepare a supplemental report to address father's visitation and was to hold a case conference, to include an invitation to counsel, within 30 days. The maternal aunt was to be evaluated as father's monitor and for placement. The court also ordered the Department to find a drug and alcohol testing site nearer father's workplace.

The Department report for September 10, 2001, stated Dr. Brito and Ms. Menen held a conference call with the CSW on August 6. The conference call came about when the CSW called the therapists and learned that at that moment they were available. Because of the difficulty in scheduling the therapists, the CSW decided to proceed with the conference without children's and parents' counsel.

Brito reported Nicole was comfortable talking about most subjects, but when he raised sexual abuse issues, she became silent. She admitted to physical abuse. It seemed she was hiding something related to abuse, but he could not be sure it was sexual abuse. All the children were very open generally, but "close[d] up" when he raised any sexual

5 Ms. Menen, a doctoral candidate, was not a licensed therapist.

abuse issues. ““Nicole immediately puts up a wall.”” Raylene said father punished them by hitting them with his hand. It was difficult to get a clear statement from Benjamin.

Ms. Menen said father had never admitted sexual abuse and had denied it whenever the subject came up. It was difficult to get him to open up. He was ““fairly defensive.”” He admitted to spanking the kids, to sending them to their room, to yelling at them to do household chores. He admitted having women over and that the children might have seen them in a “compromising position.” He knew how to parent appropriately, but consistently denied any sexual abuse, the focus of the treatment. He showed limited insight into how his behavior might have contributed to his difficulties. He could admit responsibility to some extent, but had difficulty recognizing and taking responsibility for his behavior. Eventually, he admitted ““questionable parenting practices that might be considered physical abuse.””

Dr. Brito suggested a conjoint session with the children and father. He said he would be asking the children if they would feel comfortable having father in their session. Their reaction would give him a better idea of what could possibly be happening.

Because of his therapist’s comment that father had limited insight into his behavior’s contribution to his difficulties and had difficulty recognizing and taking responsibility for his behavior, the CSW found “unclear” whether father fully realized the severity of his children’s accusations and concluded the children might be at risk if left unmonitored with him.⁶

On September 10, the court did not order any changes in father’s visitation, but ordered conjoint counseling to begin immediately. The court ordered father’s counsel to “walk . . . on” the subject of liberalization of father’s visits once the conjoint therapist deemed such visits in the children’s best interest.

⁶ Menen’s closing summary listed father’s intake date as February 5, 2001. His last session occurred on August 13, 2001. He had participated in 20 sessions. One session was canceled, and father did not arrive for two sessions.

According to the Department report for January 16, 2002, father had been unemployed since approximately November 26, 2001. Father said his work schedule was not flexible enough. Therefore, he resigned. Nicole was in second grade and still received extended day and after school help on reading and writing. Raylene was in first grade.

Dr. Brito reported the children had “made significant progress and now appear to be emotionally stable. We no longer observe significant clinical symptoms associated with the original trauma. Children-father interaction in conjoint sessions has been appropriate. At this time, we believe the clients have obtained maximum benefit from treatment. Therefore, we are terminating therapy at the end of present month.” The CSW spoke with the clinical director of the center where the children were being treated, asking for elaboration on the statement that children/father interaction during conjoint sessions had been appropriate and as to why treatment was being terminated after only three conjoint sessions.

Father had been complying with the case plan. It was not clear, however, how many times father’s drug and alcohol testing code had been called during the last four months. His four tests had been negative. Father had been seeing his new therapist, Ms. Julia Picado, since November 29, 2001. Ms. Picado told the social worker she had met with father five times. He had missed his January 10 appointment. The therapist was trying to establish a relationship with father. He was “guarded and defensive,” felt “the system [was] working against him.” He first came prepared to defend his innocence regarding the abuse. They had begun to discuss his childhood. Father seemed to be cooperative and respectful. He gave short, direct answers, but did not elaborate. His goal was to become a better parent. Progress was slow, but father was focused on regaining custody. Father remained unemployed but said he was looking for work.

Father had been visiting the children weekly for about three hours each visit. Father had begun to play with Benjamin and continued to play with Nicole, but did not approach Raylene as much. According to the foster mother, the children played

throughout most of each visits, and the children and father did not converse. The children did not become upset or emotional when a visit ended. Father told the CSW he was willing to do anything to get the children back. Nicole and Raylene were aware they needed to regularly attend school. All three children knew they needed to follow any rules set by their foster parents. The maternal aunt was prepared to monitor father's visits.

In September 2001, father had completed a five-part relapse prevention series for recovering addicts. In May 2001, he completed a six-month out-patient counseling treatment program and completed a parenting class. The Department recommended an additional six months of reunification services so that father could continue individual counseling.⁷ The Department also recommended the children continue in treatment with Dr. Brito.

On January 16, 2002, the court noted the Department's recommendation that the matter proceed to the section 366.22 date with further reunification for father and commented "the downside is that the .22 date is coming up [in approximately six weeks]." Father's counsel noted that Dr. Brito had discharged "the clients" as "successfully completed," and requested unmonitored day visits with discretion for overnight visits. Children's counsel stated Dr. Brito had seen father and the children together only three times, and she supported the Department recommendation to locate a new conjoint therapist. Children's counsel stated she did not believe three sessions were sufficient to deal with sexual abuse issues and she did not support liberalization of visits until additional conjoint therapy occurred. The Department joined that argument.

⁷ Attached to the Department report was a May 27, 1999, minute order stating father pled no contest to a charge of threatening a school officer/employee, a felony. (Pen. Code, § 71.) His three-year sentence was suspended and he was placed on formal probation. Probation conditions included no drinking alcoholic beverages, no use or possession of narcotics, to "support dependents as directed by the probation officer[.]" and to seek training, schooling or employment as approved by his probation officer. Father missed two months' counseling and visitation while incarcerated for failing to report to his probation officer.

The court expressed concern that father complied with the joint counseling order “and now the Department wants to change it because they don’t like the recommendation that the counselor gave and that just seems extremely unfair to me.” Children’s counsel expressed concern that the report lacked detail about subjects addressed and whether Dr. Brito concluded father posed no risk to the children. County Counsel emphasized the concern was risk to the children and their return to father depended on exactly what went into making the therapist’s recommendation. County Counsel also called the report inadequate. Father’s counsel said the real issue was whether father would ever be given an opportunity to reunify. Children’s counsel argued a conjoint therapist should address issues of reunification, ensuring the children’s safety and that father’s individual therapy has addressed all relevant issues. Children’s counsel also said that had the Department consulted with her, she would not have agreed to the children’s therapist as conjoint therapist.

The court agreed that father’s individual counselor should be addressing issues that brought the matter into court. The report from Ms. Picado said not much more than she and father were still trying to establish a rapport. The therapist had expressed no opinion as to whether the issues had been dealt with or the risk eliminated, something “that would carry substantial weight” with the court. The court said it was inclined to order discretion to liberalize visitation and go to the section 366.22 date, but father was entitled to present evidence on whether visitation should be unmonitored.

Father’s counsel said it appeared the Department would not exercise its discretion to liberalize visits and that he foresaw father arriving at the section 366.22 hearing still having monitored visits. He suggested unmonitored day visits after verification with father’s therapist, otherwise he would have to request a contested section 366.22 hearing. When the court pointed out there was not yet a .22 recommendation, counsel said, “Well, [a] contested .21[(f)].”

The court said it thought a supplemental report from Dr. Brito indicating his reasons for believing therapy should be terminated would be helpful, as well as a

supplemental report from Ms. Picado with an opinion about whether father presented any risks to the children.

Children's counsel suggested a conference among the Department, Dr. Brito, and Ms. Picado. The court said it did not currently have enough information to order liberalized visitation and ordered a contested section 366.21, subdivision (f) hearing on the Department's recommendation of continued monitored visitation and on whether the Department had made reasonable efforts to reunify. Because of timing, the court also set a contested section 366.22 hearing for the same date, March 14, 2002. The court further ordered the Department to use its best efforts to set up a case conference involving both therapists and ordered preparation of a section 366.22 report. The court granted father's counsel discretion to "walk . . . on" the matter if he believed the Department was acting in bad faith in not liberalizing visits.⁸

Proceedings on March 14, 2002

The Department Report

The report stated the CSW had maintained regular contact with Ms. Picado and made numerous attempts to conduct a conference call between the two therapists. The therapists' schedules thwarted those attempts. On March 13, following a March 7 telephone conversation with the CSW, at the CSW's request, Ms. Picado followed their phone conversation with a letter. She and father had met 12 times. Father "presents fairly guarded and the process of developing trust has been slow." The sexual abuse issue had been discussed from the beginning of treatment. Father consistently denied the allegations. He "perceives himself as the victim of a system which has wrongfully accused him of doing something he claims not to have done, and therefore, much of the time he is focused on expressing his reaction against the system. Given his continued denial of the *sexual abuse* against his children, that issue *cannot be adequately processed*

⁸ Reporter's transcripts for January 16, 2002, and March 14, 2002, only, accompany the petition.

in treatment.” (Italics added.)

The letter continued, “Through the course of treatment, I have observed [father] to exhibit limited insight as to how his behavior may have contributed to his difficulties. He also does not appear to be experienced in admitting responsibility and has a tendency to either minimize situations or put the blame [on] others.”

Dr. Brito reported the children appeared to be happy when with father in conjoint sessions. When asked if they wanted to be with him, their answer was always affirmative. Father had kept a positive attitude with the children. Brito had seen no threats or abusive behavior or attitude. Father consistently expressed his desire to reunify with the children. Brito did not specify why he believed therapy should end.

Asked if he felt therapy had helped him understand his behaviors which led to the children being removed from his custody, father said he realized that when the children were living with him, he was “very isolated and pressured. He was not attending Church and was not receiving support from anyone.” He said that “through his involvement with the Victory Outreach Pentecostal Church, he now feels better about himself.” Father had continued working part time for a roofing company. He was living in a two-bedroom residence with his roommate “‘Angel’ (last name unknown[]).”

The Department acknowledged father’s efforts to comply with court orders and that he cared for his children. However, the Department continued to be concerned that neither of father’s therapists reported he had recognized his harmful behavior toward his children, specifically Nicole. The Department concluded it would be detrimental to return the children because father “may not have fully participated in his counseling by openly discussing the ‘sexual touching’” of Nicole.

The Department advised the children receive permanent placement services, recommending against termination of parental rights and for guardianship, which was being discussed with the maternal aunt.

Father’s Testimony.

Father confirmed the classes he had completed and the therapy sessions. He said

both therapists had addressed sexual abuse. The conjoint sessions were “like play therapy. [Dr. Brito] would ask questions here and there” Father estimated he had missed three or four visits because of his incarceration for failure to report to his probation officer. The children had never told him during visitation that they wanted to live with him.

Asked if he believed he understood “the sexual boundaries with [the] children,” father answered, “Yes, yes.” He wanted his children home, but admitted he did not have a stable home for them. “I would just keep them with me where I’m at until I find . . . suitable housing for us.” He had not yet discussed with his friend/roommate whether he could bring the children into the friend’s two-bedroom house. Father’s roofing company work hours varied. He sometimes worked three or four hours a day. Sometimes he was gone all day.

Father and Ms. Picado talked about sex abuse awareness in “a couple of sessions,” discussing appropriate touchings. Reminded of the sexual abuse of Nicole allegation in the sustained petition, he denied the allegation. Ms. Menen had told him that “since I’m not admitting it, it would be difficult to get into that subject, so she went ahead with sexual awareness counseling.” Ms. Picado said essentially the same thing, but also told him the court’s finding did not necessarily mean he had done what the allegations charged. Father denied the maternal grandmother’s reported statement that she had seen father kissing/licking Nicole’s nipples.

Counsel stipulated that the maternal aunt, who had been monitoring visitation, would testify she had seen no inappropriate action by father.

The Court’s Rulings

At the conclusion of argument, the court found reasonable services had been provided. Liberalization of visits, said the court, is based on a parent’s progress. The court said that while it might agree that liberalization as to time and duration was appropriate, lifting the monitor would not have been appropriate. The court added that the failure to liberalize visits had no effect on father’s lack of progress in therapy or his

lack of insight into one of the problems that brought him into court.

The court found by a preponderance of the evidence that the children's return to either parent would create a substantial risk of detriment. As to father, the court found he "has been in compliance but has not made sufficient progress to warrant return of the children to his care, due to the one sex abuse counseling failure, which I think is quite severe, serious in terms of his having the children in his care." The court terminated reunifications services and set a section 366.26 hearing for July 3, 2002.

DISCUSSION

I

Father's claim that his one-day continuance request should have been granted is based, in part, on his not having been given the Department's March 14 report until the morning of the contested hearing. Section 366.21, subdivision (c) provides, in relevant part, that the social worker is to provide the court, parent and parent's counsel with a copy of the report, including the worker's recommendation for disposition, "at least 10 calendar days" before the hearing.

Accordingly, father says, he was not afforded due process -- the opportunity to examine the social worker, and to subpoena and examine the people whose statements appear in the report. At the beginning of the contested hearing, father's counsel asked for a one-day continuance, stating he had received the report that morning, which, he said, included one report from a therapist. He said he did not have enough time to prepare for or subpoena the workers and noted the absence of a report on the court-ordered therapist case conference. He said he needed to cross-examine the social worker concerning her compliance with the court order for a case conference. He said he also needed a day to personally serve subpoenas for the two therapists.

Children's counsel opposed the request, on the ground that the report fully described the social worker's efforts to effect the ordered therapist conference and those efforts clearly constituted the requisite best efforts. Counsel also argued that father knew

who the treating therapists had been and could have subpoenaed them or had them on call for the scheduled hearing. County counsel joined in the objection, arguing there were no surprises or conflicts with prior reports, which had consistently shown father's therapeutic progress as "slow." County counsel said section 352 requires a written motion for continuance filed at least two days in advance of a hearing.

Father's counsel characterized the section 366.22 recommendation -- that the children receive permanent placement services and a cessation of reunification services -- as a surprise because the January 16 report had recommended further reunification.

Children's counsel responded that on January 16, father wanted to set the visitation issue for contest. The matter was approaching the 18-month date and was set for a combined, contested section 366.21/366.22 hearing. She said the issue at a section 366.22 permanency review hearing is termination of family reunification services. County counsel concurred and said he had sent out a statement of contest two or three weeks earlier and had received none in return.

The court concluded the information in the report was not a surprise to anyone and accepted the accurate representation it was anticipated in January that the current hearing was to include a contested section 366.22 hearing and that the court ordered a complete section 366.22 report. The court said father's concerns had addressed visitation and there were several orders in January concerning liberalization.

Father's counsel objected to admission of the March 14 report as untimely and asked for an opportunity to cross-examine the social worker if the report was admitted.

The court responded by noting the parties had had an off-the-record discussion around 10:30 a.m. that morning, at which time father's counsel already had received the report and said he did not wish to cross-examine the social worker. It was now 2:15 p.m. Counsel replied that at the morning session, he had wanted to have a discussion among himself, County Counsel, and the foster father. The court said it failed to see why father's inability to call the foster father would change the necessity of examining the social worker concerning information in the report. Father's counsel said that visitation

had been a central issue in the case -- visitation's quality, nature and the Department's lack of reasonable efforts. When the court reiterated its concern about "how the foster father can testify about the efforts made by the social worker," father's counsel replied, "Your Honor, I was not aware that an offer of proof was necessary under [section 366.22]." The court responded that counsel was saying he wanted to call witnesses, but had not filed a statement of contest. The court thought it reasonable to ask for an explanation of why counsel wanted to call the witnesses he now named. The court denied the request for continuance in light of the absence of a statement of contest from father and the absence of any surprises in the Department's report and recommendation. The court said father would be permitted to testify.

The court admitted into evidence Department reports for December 6, 2000, June 6, 2001, and January 16, 2002, all with attachments, as well as, over father's objection, the March 14, 2002, report, and attachments including adoption assessment reports. The court stated, "All parties set this matter for contest with an expectation that a report would be prepared per the court's orders for today. And it does not appear that there is any prejudice by admitting it at this time."

Although a one-day continuance might, under other circumstances, seem a perfectly reasonable request, in this case, the court did not abuse its discretion in denying father's request. The March 14 report contained substantially the same information as the January report. It did not contain information from new sources or any unexpected change in recommendation. Dr. Brito's March 7, 2002, report was virtually identical to his January 10 report. With respect to father/children relationships, Brito amplified his January statement that "[c]hildren-father interaction in conjoint sessions has been appropriate." His March report added, "[The three children] appear to be happy when they are with their father in conjoint sessions. When asked if they want to be with father their answer is always . . . affirmative. The father has kept positive attitude with his children. No threats or any abusive behavior or attitude have been observed. He consistently expresses his desire of family reunification with his children."

Ms. Picado's January and March reports also were very similar, the March report contained more detail. In March, Ms. Picado wrote that she and father were still working on "building the therapeutic relationship. [Father] presents fairly guarded and the process of developing trust has been slow. The issue of the sexual abuse allegations was discussed early in the treatment. From the beginning to present, [father] has consistently denied the allegations. [Father] perceives himself as the victim of a system which has wrongfully accused him of doing something he claims not to have done, and therefore much of the time he is focused on expressing his reaction against the system. Given his continued denial of the sexual abuse against his children, that issue cannot be adequately processed in treatment.

"Through the course of treatment, I have observed [father] to exhibit limited insight as to how his behavior may have contributed to his difficulties. He also does not appear to be experienced in admitting responsibility and has a tendency to either minimize situations or put the blame [on] others.

"[Father] has expressed a consistent desire to reunify with his children. He reports he has complied with all the court-ordered requirements, including parenting training, anger management classes, drug testing, visitation and conjoint therapy with his children. However, given the limited time and progress of my therapeutic relationship with him, I do not find myself in a position to make a recommendation in regards to reunification of [father] with his children."

Thus, each therapist essentially reiterated what had been reported in January. In fact, Ms. Picado's efforts to make therapeutic contact with father and her characterizations of his treatment progress as "slow" matched Ms. Menen's earlier evaluation. The children continued to be healthy, were progressing in school and had worked through the symptoms of post-traumatic stress. Father acknowledged his housing arrangements were not stable.

As expressed at the January hearing, father's stated contest issues were liberalized visitation and a lack of reunification services. Yet, he did not request a court order

directing the worker's presence at the March hearing. Nor did he subpoena the worker. Nor had father accepted the court's invitation to "walk . . . on" visitation if he felt the Department was unreasonably denying liberalization. Nor had father subpoenaed the foster father. Indeed, at the unreported conference on the morning of March 14, having been given the Department report, counsel told the court father would not be cross-examining the worker. Four hours later, counsel requested the continuance. Under the circumstances of this case, we find no abuse of discretion in the juvenile court's denial of father's request for a continuance.

In any event, there is no reason to conclude that testimony from the social worker, either therapist, or the foster father would have produced evidence reasonably possible to change the outcome. (*In re Malinda S.* (1990) 51 Cal.3d 368, 384, superseded on another point according to *In re Lucero L.* (2000) 22 Cal.4th 1227, 1240; *In re Laura H.* (1992) 8 Cal.App.4th 1689, 1696.) Dr. Brito had long treated the children, but had not individually worked with father. Ms. Picado already had reported father was defensive, blamed the system, and denied the abuse allegations. She was *unable* to make a recommendation on return of custody. Without a recommendation from father's treating therapist that would support an order returning the children to father's custody, it was extremely unlikely the court would have so ordered.

II

We reject father's claim that the court erred in finding the Department had provided father reasonable reunification services.

Father focuses on the nonoccurrence of the second ordered therapist case conference. He says the CSW violated a specific court order to which all parties had agreed, thereby demonstrating a lack of reasonable efforts.

The court's order was that the CSW use her best efforts to bring together the therapists. Between mid-January and mid-March 2002, the social worker contacted either Ms. Picado or Dr. Brito numerous times. On January 18 and 22, 2002, she left

phone messages for both therapists. On February 15, she left a message for Ms. Picado. On February 19, she left messages for both therapists and faxed a request for a meeting to Dr. Brito. On January 23, Dr. Brito left a message saying he would be available for a conference call on January 30, and Ms. Picado left a message that she was available on January 31 at 5:00 p.m. On March 1, the CSW left a message for Ms. Picado, asking if March 7 would be convenient. On the same day, she left a message for Dr. Brito and spoke with his supervisor who said Brito was extremely busy and that Brito conducted group sessions on Thursdays from 5:30 to 6:45 and from 7:00 to 8:00 p.m. On March 5, the CSW left a message for Ms. Picado. On March 7, she left messages for both therapists. She spoke with Ms. Picado that day, and Ms. Picado followed up with a letter.

These efforts constituted substantial evidence that the CSW gave her best efforts to bringing two busy therapists together. Thus, the CSW's inability to coordinate the case conference did not constitute a failure to provide services.

III

After the court terminated reunification services, the parties selected a section 366.26 hearing date, and the court advised father of the need to file a writ petition if he wanted to preserve his appellate rights. Father's counsel objected to the court's referring the matter for a section 366.26 hearing and requested a stay. The court denied the request.

Court and counsel then discussed visitation. The court said it believed it appropriate to increase either the frequency or duration of visitation, but wanted to check individuals' availability. Father's counsel said father was "absolutely" interested in longer and more frequent visitation. He had spoken with the maternal aunt, who had been monitoring visitations, and who "seems to be very committed to helping this family be preserved." Counsel requested day visits, according to the aunt's work schedule. The aunt was willing to monitor twice a week: Saturdays from noon to 6:00 p.m. and one week day. She would work it out with father.

Characterizing the foster father as “a wonderful foster parent,” father’s counsel asked if the foster father could monitor a second weekday visit. The court approved, so long as visits did not interfere with the children’s school, counseling or scheduled extracurricular activities. The children’s counsel asked that the Department keep father up to date on any school activities in which the children were involved, so he could attend and be monitored by the foster father.

Father’s counsel then asked the court to appoint an Evidence Code section 730 evaluator “to address the sustained petition and father’s therapy[.]” The court denied the request, stating that all the documentation had been supplied to Ms. Menen and Ms. Picado. “I don’t think that there is any mystery as to what this case is about and, if father makes a good faith effort to participate in the therapy, there is no need for any outside commentary evaluator.”

In his petition, father says his request should have been granted. He claims his submission on the Department reports at the jurisdiction hearing does not negate the possibility that the alleged sexual abuse did not occur and it is clear, he says, from the juvenile court’s findings that unless he admits the sexual abuse, he will be forever barred from being a parent to his children.

Evidence Code section 730 provides, as relevant: “When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required,” the court “may” appoint an evaluator. At the jurisdictional hearing, the rough equivalent of a “trial,” father admitted the allegations, and, in light of those admissions, we agree with the juvenile court’s rejection of father’s current argument as disingenuous.

We appreciate the “confessions dilemma” faced by a parent falsely accused of sexual abuse of his child, thoughtfully described in *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1752-1754. We note, however, the *Blanca P.* court’s statement that “the confessions dilemma places an *extraordinary premium* on the correct adjudication of a petition alleging sexual abuse.” (*Id.* at pp. 1753-1754, underscoring added.) In this case, father admitted the sexual abuse in response to the original petition,

which the court sustained. In contrast, in *Blanca P.*, at a hearing on a *subsequent* petition, the judge “mistakenly believed that the matter [of sexual abuse of his daughter, not alleged in the original petition] had *already been decided against [the father][,]*” and sustained the subsequent petition. (*Id.* at p. 1741.) The court ordered a forensic psychologist to do an in-depth study of the family, including the father’s two stepdaughters. Several months later, the psychologist exonerated the father of any child molestation or any tendency toward child molestation. Nonetheless, the fact the court had sustained a petition alleging child abuse remained. At an 18-month review conducted by another judge, the court determined -- without examining whether any molestation ever occurred -- it would be detrimental to return the children. The only evidence supporting the detriment finding was the sustaining of the subsequent petition alleging child molestation. There is here no issue of lack of evidence of detriment apart from the sexual abuse allegation, and we note again father’s submittal. Given the context of the juvenile court’s ruling in this matter, there was, and is, no issue concerning the correctness of the adjudication.

The sexual abuse allegation appeared in the original petition in this case. Ms. Menen, with whom father had 20 sessions, and Ms. Picado, with whom he had 12 sessions, similarly described father’s guarded attitude. Ms. Picado deemed herself unable to make a recommendation concerning risk of detriment to the children if they were returned to father. Dr. Brito described a Nicole who spoke freely about subjects, including physical abuse, until the doctor approached the topic of sexual abuse. The doctor could not determine whether her silence concerned the inappropriate physical disciplining or sexual abuse. The doctor stated, after several play therapy joint sessions, that father behaved appropriately. The record before us offers nothing to suggest that a section 730 evaluation concerning the sustained petition and father’s progress in therapy would do more than delay a resolution of the children’s needs.

Perhaps the most critical difference between *Blanca P.* and father’s situation is the timing of father’s request. In *Blanca P.*, the court ordered a family evaluation

immediately after sustaining the subsequent petition. Here, more than 18 months after the filing of the petition, father requested an evaluation of the sustained petition and his progress in therapy, shortly after he testified denying the abuse. After the court ordered reunification services terminated, the focus shifted to providing a permanent, stable placement for the children. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 304.)

Father also claims his evaluation request would be in the children's best interests in light of the court's dramatic expansion of visitation after it terminated family reunification services. We reject the argument that criticizes a court for ordering continuing contact at a level requested by father, who is now facing a scheduled section 366.26 hearing. As County Counsel observed at one point, the ball is in father's court.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

RICO, J.*

* Judge of the Superior Court of Los Angeles County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.